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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,303	01/02/2002	Charles F. Butler	Butler *6	6805

7590

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EXAMINER

YU, JUSTINE ROMANG

ART UNIT

PAPER NUMBER

3764

DATE MAILED: 01/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/039,303

Applicant(s)

BUTLER, CHARLES F.

Examiner

Justine R Yu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Drawings***

1. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.
2. The drawings are objected to because reference numbers "12" and "14" are enclosed in outlines. In addition, arrows should be used at the end of the lead line in order to clarify confusing. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Specification***

3. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

### ***Claim Rejections - 35 USC § 112***

4. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, step B, it is not clear how does wave generation device produce vibratory signal without any transducer. The term "said body" lacks antecedent basis. In step C, it appears that the step of moving the location of the signal by varying the frequency of the signal is misdescribed. It is understood that the frequency could affect the vibration of a transducer, i.e.,

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loudspeaker, but not the location. In addition, how to define the frequency of a signal and by structural element being used to vary the frequency of the signal?

In claim 5, "the said signal" should read as --said signal--.

*Claim Rejections - 35 USC § 102*

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3 and 6-8 as best understood are rejected under 35 U.S.C. 102(b) as being anticipated by Murtonen (5,113,852).

Murtonen teaches a vibration device having a wave generator 1, loudspeakers 2a-2d being located adjacent to the user, and the frequency range is between 20-200 Hz (within the claimed 20-800 Hz range). Murtonen in column 4, lines 18-22 and 35-45 teaches that the frequency range and amplitude can be adjusted. Murtonen has the same structure as claimed and would be able to perform the same function.

7. Claims 1-3 and 5-7 as best understood are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Skille et al (5,101,810).

*Claim Rejections - 35 USC § 103*

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8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Murtonen.

Murtonen in column 4, lines 19-22 teaches that the amplitude can be varied but lacks a detail description that the amplitude is selectively varied between 0 and 120 decibels. However, the feature of choosing a particular range, i.e., between 0-120 decibels is considered as an obvious design choice within the knowledge of one skill in the art, as is necessary and inherent upon various applications.

10. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Murtonen in view of Skille et al (5,101,810).

Murtonen does not explicitly disclose step of providing a rhythmic beat to the signal. However, Skille teaches method of superimposing music (with rhythmic beat) to the vibration signal. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Murtonen's vibration signal with music as taught by Skille, in order to enhance the therapeutic result.

### *Conclusion*

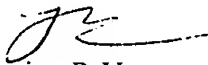
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11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Vogel (4,753,225), Chesky (5,035,235), Fenner, Jr. 5,473,700), and Komatsubara (4,967,871) are cited to show different vibration devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justine R Yu whose telephone number is (703)308-2675. The examiner can normally be reached on 8:30am - 6:00Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (703)308-2698. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3590 for regular communications and (703)305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

  
Justine R Yu  
Primary Examiner  
Art Unit 3764

JY  
January 25, 2003